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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/851,040 05/05/97 VISSER

B 17342-000500

PM82/0410  
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EXAMINER

CHILCOT, R

ART UNIT

PAPER NUMBER

2167

DATE MAILED:

04/10/01

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UNITED STATES DEPARTMENT OF COMMERCE  
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 24

Application Number: 08/851,040  
Filing Date: May 05, 1997  
Appellant(s): Barney D. Visser

Darin J. Gibby  
For Appellant

**MAILED**  
APR 10 2001  
GROUP 3600

**EXAMINER'S ANSWER**

An appeal conference was held on April 3, 2001, between the undersigned examiner, Robert Olszewski, SPE of Art Unit 2167 and Kenneth Rice, Primary Examiner, Art Unit 2167.

This is in response to appellant's brief on appeal filed February 13, 2001.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

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**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

This appeal involves claims 21-26 and 28-36.

In view of appellant's remarks filed in the Brief, claims 1-4, 6-16, and 18-20 are allowed.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief regarding the statutory subject matter is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-4, 6, 9, 10, 16, 18 and 19 (Group I), claims 21, 22 and 24 (Group II), claims 7, 11-15 and 20 (Group III), claims 23, 25, 26, 28-30, and 31-35 (Group IV), and claims 8, 29 and 36 (group V) do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

No references are relied upon.

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-26 and 28-36 are rejected under 35 U.S.C. 101. This rejection is set forth in prior Office action, Paper No. 19.

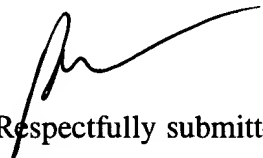
**(11) *Response to Argument***

Appellant argues that claims 21-26 and 28-36 are not drawn to a method of doing business, but rather a method presenting inventory for sale. The examiner is of another opinion. As set forth in the Office action dated September 25, 2000, the claims require the use of a human thought and movement. Specifically, claim 21 requires a human entering into a parking facility, a human selecting one of the outside entrances and entering into the selected outside entrance, a human moving to and standing in an aisle, a human looking down the aisle and visualizing at least some of the interior of each store, a human selecting an item and a human purchasing the item. It is quite clear that appellant trying to obtain a Patent on how an individual shops, which is non-statutory subject matter. With respect to appellant's comment

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that the examiner's reliance of MPEP § 2106 is irrelevant, the examiner respectfully disagrees. The examiner relied on these sections to demonstrate the proper format for business related method claims. It is clear from the last line of claim 21, the purchasing of an item clearly sets forth a business method. Accordingly, since the claims are business methods, then the claims must fall within the safe harbors listed in the appropriate sections of the MPEP. However, these claims fail to fall within the acceptable safe harbors.

For the above reasons, it is believed that the rejections should be sustained.

  
Respectfully submitted,

Appeal Conference Attendees:



Robert Olszewski



Kenneth Rice

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April 6, 2001

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